Roger Williams University Law Review

Volume 27
Issue 3 *Vol 27, Iss. 3 (Summer 2022)*

Article 25

Summer 2022

Belmore v. Petterutti, 253 A.3d 864 (R.I. 2021)

Whitney A. Saunders
Candidate for Juris Doctor, Roger Williams University School of Law

Negligence. *Belmore v. Petterutti,* 253 A.3d 864 (R.I. 2021). The determination of proximate cause in a negligence action is typically a question that should not be decided by a motion for summary judgment.

FACTS AND TRAVEL

In February 2015, the plaintiff, Betty Belmore filed a complaint in the Kent County Superior Court alleging that she had fallen down the defendant, Cheryl Petterutti's, outside stairs at Cheryl's Warwick home.[1] Plaintiff alleged in her complaint that there were no hand railings on the outside stairs and that the defendant was negligent in not installing hand railings.[2] Plaintiff also contended that defendant was in violation of a Rhode Island statutory duty to install railings.[3]

In August 2018, depositions were conducted, and plaintiff explained that she used to babysit the defendant's children and that is how the two formed their relationship.[4] Plaintiff further explained that even after her babysitting services were no longer needed, she maintained a relationship with the defendant and referred to the defendant as being "a good friend."[5] Plaintiff stated that she had been to defendant's home several times to visit with defendant, including going to defendant's yearly Christmas Eve party for several years.[6]

Plaintiff stated that in June 2012, she went to the defendant's house to drop off a floral arrangement from an event that the defendant had not been able to attend earlier in the day.[7] Plaintiff stated that in order to get into the front entrance of defendant's

1. Belmore v. Petterutti 253, A.3d 864, 865 (R.I. 2021).
2. *Id*. at 865.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id*.
7. *Id.*

home "she had to climb '12 cement steps' which were 'narrow and with no banister.'"[8] Plaintiff said she was familiar with the steps as she had been to defendant's house many times but regardless, after she walked out of the home she "went all the way down to the bottom [and] fell on the gravel driveway."[9] Plaintiff was unable to identify what caused her fall and conceded that she did not reach for any type of support as she was falling down the stairs.[10] Plaintiff injured her left shoulder and wrist, and both knees during the fall which required several surgeries in the years following.[11]

In June 2019, the defendant sought summary judgment on the grounds that plaintiff was unable to identify the cause of her fall or the defendant's responsibility for the fall.[12] The defendant also contended that she had no legal obligation to provide handrails on her stairs and therefore summary judgment was proper.[13] Included in the defendant's motion was a letter by James Younger, AIA, an expert the defendant retained for the case.[14] In the letter Mr. Younger explained that the state building code in effect at the time of the plaintiff's fall had a grandfathering provision that did not require the defendant to install handrails.[15]

The plaintiff filed an objection to the summary judgment motion arguing that genuine issues of material fact existed, including the lack of handrails and the defendant's failure to install handrails, and these issues need to be determined by a jury.[16] Plaintiff retained her own expert and attached a letter from her expert to her objection.[17] Plaintiff's expert explained that while the defendant's residence might have been subject to a grandfathering provision, the lack of hand railings is still dangerous to those using the stairs.[18]

---

8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 866.
13. *Id.*
14. *Id.* (Citing that the AIA designation may be used by members of the American Institute of Architects. See: https://www.aia.org/pages/79961-using-the-aia-designation (last visited June 28, 2021).
15. *Id.* at 866.
16. *Id.*
17. *Id.*
18. *Id.*

On November 12, 2019, the parties were heard on the motion for summary judgment.[19] At the hearing, the focus of plaintiff's argument was that even if the stairs were grandfathered into the building code at the time of the incident, the defendant was still negligent.[20] Defendant argued that the Rhode Island standard is "whether it was safe and compliant with the building code and maintained in a reasonably safe condition on the date of the loss, and unquestionably it was."[21]

After arguments the hearing justice stated that there was a duty on both parties in this situation and usually issues of breach of duty are jury questions and therefore are not susceptible of summary judgment adjudication.[22] The hearing justice went on to say that if a plaintiff is unable to provide sufficient evidence showing defendant's negligence as "the proximate cause of his or her injury or from which a reasonable inference of proximate cause may be drawn, then summary judgment becomes proper."[23] The hearing justice granted summary judgment in this case because the plaintiff was unable to show how she fell or that the defendant was responsible in any way for her fall.[24] Plaintiff then timely filed a notice of appeal to the Rhode Island Supreme Court.[25]

ANALYSIS AND HOLDING

The Court began by noting that summary judgment decisions are reviewed *de novo* using the same standards as the hearing justice, and that in doing so the court must "examine the evidence in a light most favorable to the nonmoving party" and affirm the judgment if it "conclude[s] that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law."[26] The Court further explained that "the purpose of

19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 866–67.
24. *Id.* at 867.
25. *Id.*
26. *Id.* (citing Ouch v. Khea, 963 A.2d 630, 632 (R.I. 2009)).

summary judgment procedure is issue finding, not issue determination."[27]

On appeal, plaintiff argued that the award of summary judgment in defendant's favor was erroneous because there were genuine issues of material fact that should have been heard by a jury.[28] More precisely, plaintiff argued that she presented enough evidence to raise genuine issues of material facts; what caused her to fall and was defendant responsible for the fall.[29] The plaintiff also argued that the hearing justice erred by finding that owners of historic properties do not have a duty to fix dangerous conditions.[30] The defendant argued that plaintiff's objections must fail.[31] Specifically, the defendant argued that plaintiff "waived her argument that the stairway is not subject to grandfathering protection" because of the Court's "raise-or-waive rule."[32] Defendant further contended that her home is "grandfathered from compliance with the handrail requirement of the building code" and as such she had no obligation to install a railing on her stairs.[33] Lastly, defendant averred that plaintiff did not raise an issue of material fact regarding what caused her to fall down the stairs, and further, by failing to raise the issue below pertaining to any "new dangerous condition" that could have caused her fall, plaintiff was unable to argue that on appeal.[34]

The Court found that it did not need to deal with the parties' conflicting arguments because the motion justice very simply stated, without any further explanation, that "there existed a duty 'on the part of the landlord' as well as 'on the part of the plaintiff'" but granted summary judgment for the defendant because plaintiff was not able to show what caused her fall or that the defendant was responsible in any way for her fall.[35] Ultimately, the Court held

27. *Id.* (citing Walsh v. Lend Lease (US) Construction, 155 A.3d 1201, 1205 (R.I. 2007); *see also* Steinburg v. State, 427 A.2d 338, 340 (R.I. 1981) (In ruling on a motion for summary judgment, the hearing justice must look for factual issues, not determine them).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id*. at 867–68.

that the judgment must be vacated and the case should be remanded to the Superior Court for further proceedings.[36]

The Court found that the motion justice improperly based his decision on his finding that the plaintiff did not show the proximate cause of her injuries.[37] The Court explained that the motion justice's ruling was inconsistent with the Court's established precedent on negligence actions.[38] The Court's precedent explains that "ordinarily the determination of proximate cause is a question of fact that should not be decided by summary judgment."[39] Accordingly, the Court went on to hold that the hearing justice's focus on whether plaintiff could show proximate cause when determining whether to grant summary judgment was erroneous because proximate cause is usually not appropriate for summary judgment, and there is nothing peculiar about this case that would make that principle inapplicable.[40] The Court consequently vacated the judgment and remanded the case to the Superior Court for further proceedings consistent with its opinion.[41]

COMMENTARY

The Rhode Island Supreme Court, applying the same standards as the hearing justice and examining all the evidence in the light most favorable to the nonmoving party, properly held that the motion justice erred in granting summary judgment because the plaintiff was unable to show proximate cause in her negligence action.[42] It is well-established through the Court's precedent that an issue of proximate cause is ordinarily not to be decided through summary judgment adjudication.[43] Here, there was clearly a genuine issue of material fact: what were the parties' duties and did either party breach their duty.[44]

---

36. *Id.* at 868.
37. *Id.*
38. *Id.*
39. *Id.* (Citing Splendorio v. Bilray Demolition Co., Inc., 682, A.2d 461, 467 (R.I. 1996)).
40. *Id.* at 868.
41. *Id.*
42. *Id.* at 867.
43. *Id.* at 868.
44. *Id.* at 866.

On its face, the Court's decision does not seem to have substantial implications, but the holding adds an additional layer of protection for plaintiffs in negligence actions who are not able to show proximate cause because the hearing justice cannot grant summary judgment based on the plaintiff's failure to show proximate cause. The inability to show proximate cause is a genuine issue of material fact, and as such, should be a question for the jury not the hearing justice.

CONCLUSION

The Rhode Island Supreme Court found that a hearing justice erred when granting summary judgment on the grounds that the plaintiff failed to show proximate cause in a negligence action. The Court explained that proximate cause is ordinarily not subject to summary judgment and there is nothing special about this case to find otherwise.

Whitney A. Saunders